

### REMARKS

This responds to the Office Action dated April 28, 2009. No claims are hereby amended. Thus, claims 36 to 65 remain pending, and reconsideration of the restriction of claims 54 to 65 is respectfully requested.

#### Constructive Election

Applicant respectfully requests that the Examiner reconsider the restriction made in the Office Action with regard to claims 54 to 65. If the restriction is upheld, then Applicant will address their withdrawal in the next official communication.

#### Double Patenting Rejection

Claims 36-53 were rejected under the judicially created doctrine of double patenting over claims 1-17 of U.S. Patent No. 6,679,461 (Attorney Docket 558.003US1) to Hawkins in view of U.S. 5,172,097 to Arnold.

Without addressing the assertions made in the double patenting rejection, Applicant shall defer submission of a Terminal Disclaimer until such time as the claims are indicated to be otherwise allowable. To avoid delay, Applicant invites the Examiner to contact Applicant's representative, Timothy E. Bianchi, at (612) 373-6912 or at [TBianchi@SLWip.com](mailto:TBianchi@SLWip.com) to inform him that the subject matter is otherwise allowable and to request a Terminal Disclaimer.

#### § 103 Rejection of the Claims

Claims 36-40, 42-49 and 51-53 were rejected under 35 U.S.C. § 103(a) as being obvious over Hawkins et al. (U.S. 5,855,342; hereinafter "Hawkins") in view of Burgess et al. (U.S. 7,102,089; hereinafter "Burgess"); and further in view of Swaney (U.S. 4,819,795). Applicant respectfully traverses the rejection on several grounds as follows:

The rejection asserts:

*However, Hawkins '342 fails to teach a rigid (plate) structure, wherein at least a portion of the rigid (plate) structure disposed on the top surface and coupled with the support structure. Nevertheless, Burgess '089 discloses a plate structure (145a), wherein the plate structure includes metal sheet; wherein at least portion of the plate structure disposed on the top surface and disposed within the recess; wherein the plate*

*structure is a substantially rigid plate structure, and further comprising a fastener that fasten the plate structure with the support structure. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included the support device of Hawkins '342 with a rigid structure as taught by Burgess '089 wherein doing so would provide thereof for a better design consideration.*

In the previous response to Office Action, Applicant argued:

Applicant believes that the added claims more clearly define the present subject matter and differentiate from a pressure actuated switching device of Burgess. It is believed that this clarification further renders Burgess nonanalogous. In addition, Burgess is not directed to a support device to be installed on a rooftop to support elongate structures extending along a rooftop surface of the rooftop. Accordingly, Applicant respectfully submits that Burgess is improperly applied against the present subject matter relating to support elongate structures extending along a rooftop.

Applicant respectfully reasserts that the Burgess reference is nonanalogous for at least the reasons set forth in the previous response. For example, Burgess is not directed to a support device to be installed on a rooftop to support elongate structures. The Response to Argument in the Office Action only stated that the arguments are “considered moot in view of the new ground(s) of rejection.” Applicant respectfully traverses this assertion. The subject matter of the claims was not amended in this response and thus, it is respectfully submitted that the argument was not addressed in the previous Office Action. Thus, withdrawal of Burgess or some form of argument is respectfully requested in the next official communication. Applicant respectfully requests that if a rejection is clarified, maintained, or changed, that the next Office Action be a nonfinal Office Action to afford Applicant the ability to address such rejection.

Applicant further respectfully submits that the assertion that “doing so would provide thereof for a better design consideration” is an improper assertion of obviousness, as this is tantamount to impermissive hindsight. Applicant traverses the assertion that one of skill in the art at the time of invention would have consulted a reference directed to a switch such as Burgess for the present subject matter. Thus, the rejection is further traversed on these grounds.

The rejection continues stating:

*Hawkins '342 fails to teach wherein at least one elongate strut is defined by the plate structure. Burgess '089 discloses an elongate strut is defined by the plate structure. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified a strut of Hawkins '342 with the plate as taught by Burgess '089 to formed by surfaces of the plate into one piece to save manufacturing costs. In re Larson, 340 F.2d 965, 968, 144 USPQ 347,349 (CCPA 1965).*

Applicant respectfully traverses this assertion because it is respectfully re-asserted that Burgess is nonanalogous subject matter. Furthermore, Applicant respectfully traverses the rejection's assertion that the strut of Hawkins would be modified with a plate of Burgess "to save manufacturing costs." Applicant respectfully submits that the rejection is relying on nonanalogous art and that the rejection fails to state a basis for concluding that manufacturing costs are indeed saved. Thus, the assertion is traversed on multiple grounds.

The rejection goes on to state:

*Furthermore, Hawkins '342 in view of Burgess '089 fails to disclose wherein a plate structure disposed onto at least a portion of the side surfaces. Nevertheless, Swaney '795 discloses a cover (39) with lips (41) disposed onto at least a portion of the unit. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included the support device of Hawkins '342 in view of Burgess '089 to include the lips as taught by Swaney '795 because one would have motivated to provide a means for preventing dirt/moisture from running into the interior of the support structure.*

Applicant respectfully traverses the rejection using Swaney, as it is believed to also be nonanalogous subject matter. Swaney relates to packaging for footwear. It is respectfully submitted that the claim properly defines the present subject matter and that one of skill in the art would at the time of invention would not consult a patent relating to footwear. Reconsideration and withdrawal are respectfully requested. Furthermore, Applicant respectfully submits that the assertion that "preventing dirt/moisture from running into the interior of the support structure" would be a proper motivation for one to consult a packaging for footwear reference. Withdrawal of the rejection is respectfully requested.

Applicant respectfully submits the arguments relating to claim 36 apply to the remaining dependent claims 37 to 53. Reconsideration and allowance of the present subject matter are respectfully requested.

Claims 41 and 50 were rejected under 35 U.S.C. § 103(a) as being obvious over Hawkins in view of Burgess, in further in view of Swaney, and in further view of Wong et al. (U.S. 6,888,977; hereinafter "Wong"). Applicant respectfully traverses. It is respectfully submitted that Wong relates to an optical switch and therefore also is nonanalogous subject matter. It is also respectfully submitted that one of skill in the art at the time of invention would not be

inclined to consult an optical switch reference for combination with the present subject matter or for combination with Swaney. Thus, Applicant respectfully traverses the assertion made in the rejection. Applicant further respectfully reasserts the failings attributed to Burgess and Swaney noted herein. Reconsideration and allowance of claims 41 and 50 are respectfully requested.

Applicant respectfully requests reconsideration and allowance of all of the pending claims for at least the reasons set forth herein.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone the undersigned at (612) 373-6912 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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Date Oct. 28, 2009

By /Timothy E. Bianchi/  
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 28<sup>th</sup> day of October, 2009.

Name

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Signature

